

**BUREAU OF AUTOMOTIVE REPAIR**

**INITIAL STATEMENT OF REASONS**

**HEARING DATES:**

December 7 and 9, 2005

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:**

Cleanup and Revision of Smog Check Station Regulations: Requirements for Telephone Line; Testing of Test-Only Directed Vehicles at Test-and-Repair Stations

**SECTIONS AFFECTED:**

§§ 3340.1, 3340.16, 3340.16.5, 3340.16.6, 3340.17, and 3340.41 of Title 16, Division 33, Chapter 1, Article 5.5 of the California Code of Regulations.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The proposed action is intended to provide clarification of existing requirements regarding the operation of smog check stations, smog check inspection and testing equipment and the testing of test-only directed vehicles. The changes proposed in this action are primarily technical, cleanup amendments that clarify existing requirements, eliminate unnecessary duplication, reorganize and relocate certain provisions into more logical and appropriate sections, and eliminate obsolete provisions. The proposed action will eliminate references in various sections to the now defunct BAR-90 Test Analyzer System (TAS) that has been replaced throughout the state with the BAR-97 Emissions Inspection System (EIS) platform. The proposed action will specify that test-and-repair stations may not refer a customer to a particular test-only station when the customer's vehicle has been directed to a test-only station, and provides similar requirements to those applicable to test-only stations with respect to providing lists of test-and-repair stations to their customers. The proposed action will consolidate the requirements for telephone line connections for the EIS into one section that includes all equipment, electronic transmission, maintenance and calibration requirements, and will clarify and reinforce the requirement to keep the telephone or communication line connected to the EIS at all times. Provision will also be made for the use of a high speed or broadband connection as an alternative to a modem and telephone line connection. As a result of this consolidation, a violation of these provisions will be subject to issuance of a citation pursuant to Health and Safety Code section 44050, et seq. Finally, the proposed action will clarify and reinforce the prohibition against test-and-repair stations performing smog

check inspections on and issuing certificates to vehicles that have been directed to a test-only station. Additional conforming amendments, and minor technical, grammatical and editorial changes without regulatory effect, are also included in the proposed action.

The proposed action will make the following changes to existing regulation:

1. Amends Section 3340.1 by removing reference to the now obsolete “Test Analyzer System” or “EIS.” Other minor technical, grammatical and clarifying editorial changes are also made.
2. Amends Section 3340.16 by removing reference to the now obsolete “Test Analyzer System” or “EIS.” Other minor technical, grammatical and clarifying editorial changes are also made.
3. Amends Section 3340.16.5 by reorganizing subsection (c) in a clearer and more logical format. A new subsection (d) is added which clarifies the prohibition against test-and-repair stations referring vehicle owners to a particular test-only station and requires the test-and-repair station to make available to customers a list, provided by the Bureau, of test-only stations in the area. This mirrors the provisions of subsection (e) of Section 3340.16, which prohibits test-only stations from referring vehicle owners to a particular test-and-repair station for repairs. Subsection (d) is renumbered (e), and other minor technical, grammatical and clarifying editorial changes are also made.
4. Repeals Section 3340.16.6 and incorporates those provisions into Section 3340.17.
5. Amends Section 3340.17 by removing reference to the now obsolete “Test Analyzer System” or “EIS” and deleting paragraph (1) of subsection (a) which has become obsolete. The provisions of Section 3340.16.6 are also added as subsection (h) and provision is added allowing the use of high-speed or broadband connections as an alternative to a modem and telephone line connection. Other minor technical, grammatical and clarifying editorial changes are also made.
6. Amends Section 3340.41 by deleting the existing provisions of subsection (e), which duplicate the provisions of subsection (e) of Section 3340.16, and replacing them with provisions that clarify and reinforce the prohibition against test-and-repair stations testing and certifying test-only directed vehicles.

#### **FACTUAL BASIS:**

The Bureau of Automotive Repair (Bureau), within the Department of Consumer Affairs, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile

sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the Bureau licenses smog check stations and technicians and certifies inspection equipment.

Mobile source emissions reductions are achieved when high emitting vehicles are identified and then repaired. If high emitting vehicles are not identified and repaired, the effectiveness of the Program is greatly diminished.

After the enactment of the federal Clean Air Act Amendments of 1990, the United States Environmental Protection Agency (USEPA) mandated California to adopt a more stringent vehicle inspection program for urban areas of the state that have severe air pollution problems. These "Enhanced Areas" are California's smoggiest urbanized regions, which currently do not meet federal air quality standards for ozone. All vehicles registered in these areas are tested for, in addition to the emissions tested for in the other program areas, another unhealthy smog-forming pollutant, oxides of nitrogen (NOx), by using a treadmill-like device called a dynamometer.

The State of California must conform, under the threat of federal sanctions and citizen lawsuits, to the provisions of the 1990 amendments to the federal Clean Air Act, as administered and enforced by the United States Environmental Protection Agency (USEPA). California has committed to meeting this obligation in its State Implementation Plan (SIP). The State of California is required by federal law to demonstrate that the improvements to the Smog Check Program as outlined in the SIP and state law, are reducing vehicular pollution from automobiles and light-duty trucks by an additional 112 tons per day statewide.

USEPA regulations call for a complete separation of all vehicle testing from repairs to avoid any conflict of interest among stations that do both testing and repair. However, California was successful in gaining the approval of the USEPA for a deviation from the federally preferred total separation by demonstrating equivalency and assuring the objectivity of the test-only component of its State Implementation Plan (SIP). State law and California's SIP provide for the testing of a portion of the vehicles registered in the Enhanced Areas at stations that only perform Smog Check inspections (i.e., "Test-Only" stations).

The Program is continually evolving and fluid, changing over the years to keep up with and take full advantage of newly developing technological advances. As technology has advanced and regulations have been amended to improve the Program, those regulations have become somewhat complex and convoluted, and some provisions have become obsolete. Several regulations need to be amended and brought up to date by removing outdated provisions, consolidating related provisions and clarifying provisions that may appear to conflict with one another.

For example, there are still provisions in regulation that refer to the BAR-90 Test Analyzer System (TAS) and its specifications. The BAR-90 TAS has been completely

replaced, statewide, by the BAR-97 Emissions Inspection System (EIS), and can no longer be used in the Program. Also, there is a separate regulation that addresses the requirement for and the limitations on a telephone line to connect the EIS to the Bureau's Vehicle Information Database (VID) and the Department of Motor Vehicles (DMV). These provisions would be more appropriately included in the regulation that establishes the requirements and specifications for test equipment, the maintenance and calibration requirements for that equipment, and the requirements for the electronic transmission of test data. In addition, advances in communications technology since the initiation of the Program's current electronic data transmission system now include high speed and broadband connection capabilities which can be compatible with the BAR-97 EIS communication system, and should be an acceptable alternative to the standard telephone line connection.

Consolidation of the communications provisions Section 3340.16.6 in Section 3340.17 will also provide for the issuance of citations for violations of those requirements. Currently, the only means of formally addressing such violations is the formal Administrative Procedure Act accusation process, which is not always appropriate for minor violations. The ability to issue citations will provide a means of addressing these matters at an appropriate level. This will not result in any adverse economic impact to smog check stations or technicians since all they must do to avoid receiving a citation is to comply with current law.

**Underlying Data:**

None.

**Business Impact:**

These regulations will not have any adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/ testimony:

The proposed amendments do not impose any new requirements or additional restrictions. They are primarily technical, cleanup amendments that clarify existing requirements, eliminate unnecessary duplication, reorganize and relocate certain provisions into more logical and appropriate sections, and eliminate obsolete provisions.

**Specific Technologies or Equipment:**

These regulations do not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and

brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

No alternatives have been identified or brought to the attention of the Bureau.